

CA - Sayreville

Apr. 8, 76

Brief of the Defendant - Borough of Sayreville

PI 963

pg. 15

p.i. 1333

CA001912B

Trial Brief

FILED

APR 8 1976

DAVID R. FURMAN, J.S.C.

ALAN J. KARCHER, ESQ.
Attorney for Defendant,
Borough of Sayreville
61-67 Main Street
Sayreville, New Jersey 08872

URBAN LEAGUE OF GREATER NEW BRUNSWICK,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

vs.

THE MAYOR AND COUNCIL OF THE BOROUGH OF
CARTERET, etals.,

Defendants.

DOCKET NO. C 4122-73

BRIEF OF THE DEFENDANT - BOROUGH OF SAYREVILLE

INTRODUCTION

At the time the Borough moved for dismissal of the plaintiff's complaint, a thorough and comprehensive examination and analysis was made of the allegations set forth in the pleadings. It was emphasized at that time that the plaintiffs had failed to carry their burden of proof or to establish a prima facie case with regard to any of the specific allegations set forth in their complaint.

The Court specifically ruled that the plaintiff's allegation that the Borough of Sayreville was excessively zoned for industrial uses be dismissed. It was further the Borough's understanding that inferentially the other specific allegations set forth in the plaintiff's moving papers likewise be dismissed but that, based upon the concept of "Notice Pleadings", there still remained open questions or challenges to certain internal provisions of the P.U.D. Ordinance.

It would appear, therefore, that the posture of the plaintiff's case against the Borough of Sayreville could be summarized as follows:

a. The allegation dealing with the prohibition of mobile homes is a question of law upon which the Vickers case would appear to be dispositive.

b. The specific allegations set forth in plaintiff's pleadings are moot, except for how they apply to the Planned Unit Development Ordinance.

c. The sole remaining allegations against the Borough of Sayreville are in reference to matters contained within its P.U.D. Ordinance.

Inasmuch as the only remaining issues are those involving various provisions of said P.U.D. Ordinance, the Borough wishes to deal with these open items seriatim in the following analysis of the testimony and review of the applicable law.

ARGUMENT I

NO PROOF EXISTS THAT THE BOROUGH'S
PROHIBITION OF ADJACENT LOOK-ALIKE
BUILDINGS IS RESTRICTIVE OR HAS ANY
EXCLUSIONARY EFFECT.

It should be emphasized that the role of the Court in reviewing any zoning provision is rather limited. The wisdom of an ordinance can only be subject to judgment if the presumption of its validity is overcome by an affirmative showing of unreasonableness or arbitrariness.

If the issue is debatable, the ordinance must be upheld. *Rudderow v. Tp. Comm., Mt. Laurel*, (App. Div. 1972) 121 N.J. Sup.409; *Kozesnik v. Montgomery Tp.*, 24 N.J. 154 (Sp. Ct. 1957).

The Court will recall that at the very least, the question of aesthetic considerations were extremely debatable at least as far as the only witness against the Borough of Sayreville on this subject was concerned. I am not certain whether Mr. Mallach operates off Aristotelian or Thomian principles or whether the Mayor and Council of the Borough of

Sayreville adhere more to Joycean or Bergsonian aesthetic precepts. Whatever the case may be, it is certainly open to legitimate debate. However, much more importantly, the record is void of one scintella of testimony affirmatively indicating that this provision increases the cost of housing one cent.

ARGUMENT II

OFF-STREET PARKING PROVISIONS FOR
GARDEN APARTMENTS ARE NOT UNREASONABLE .

The Borough of Sayreville is a community with extremely limited mass transit facilities. There is presently, and the Borough has every right to expect that there will be in the future, almost a total reliance upon private automobiles. Present experience indicates that one parking space per unit, or even $1\frac{1}{2}$ per unit is too little, and causes illegal parking in places which often block the ingress and egress of fire, police and other emergency vehicles.

There is no evidence at all in the record that the requirement for two parking spaces per garden apartment increases the cost thereof, and even if such testimony were present, the most it could indicate is that the cost of the unit was increased by approximately \$25.00, the cost of paving an additional 50 feet of a macadam parking space. When viewed from this aspect, the allegation that it somehow restricts low and moderate income

housing becomes merely ludicrous. When converted into monthly rentals, it would amount over the depreciable life expectancy of the parking lot to about 3¢ per month; really not enough to discourage anyone.

ARGUMENT III

THE AREAS ZONED FOR P.U.D. PRESENTLY
ARE IN SINGLE OWNERSHIP WHICH WILL
FACILITATE RATHER THAN OBSTRUCT
DEVELOPMENT .

It is respectfully pointed out to the Court that even the Urban League's experts testified that having the tracts in single ownership facilitates development inasmuch as it eliminates the necessity for assembling parcels. The experts presented by the Borough also clearly explain that because of the extraordinary topographical features of the property, they necessitate comprehensive treatment of drainage, traffic, safety problems.

Put simply, there is just no other way to work on these parcels of land, except on a large scale. Patchwork treatment would compound problems rather than solve them.

ARGUMENT IV

SAYREVILLE IS NOT A "DEVELOPING COMMUNITY"
WITHIN THE DEFINITION OF THE MOUNT LAUREL DECISION.

It must be borne in mind that the Township of Mount Laurel was, and to a large degree still is, a rural farming community with no significant commercial or industrial development whatsoever, and having no economic tradition other than agriculture. What pressure there has been for development in Mount Laurel, has over the last few years been almost exclusively residential.

The factual milieu, out of which arose the Mount Laurel decision with its concept of "Developing Communities", is not comparable in any manner to the realities prevailing in the Borough of Sayreville in 1976. What happened in Mount Laurel in the late 60s and early 70s of this century, had actually occurred in the Borough of Sayreville over 100 years ago when substantial areas in the heart of the Borough began to be strip-mined to support a burgeoning ceramics industry. The Sayre & Fisher Brick Works at one time ranked among the top 10 industries in the entire State as to number of total employees. Even before the turn of the Century there were a number of other ceramic product producers manufacturing and mining in the Borough of Sayreville. What farming tradition there had been was terminated by the time Sayreville became a Township in 1876.

Shortly before World War I, large, heavy chemical manufacturers constructed sprawling complexes throughout the

Borough. Throughout these years there was a corresponding growth in residential development keeping pace with the industrial expansion, and providing homesteads for the workers involved in the manufacturing of both ceramic products and chemicals. While there has been a demise of the ceramics industry, the Borough is still the site of a large number of nationally known corporations.

Sayreville therefore has had a century or more of intensive development since it emerged from an agrarian community. As a result of this development, Sayreville presently has four major categories of property:

(1) Wet lands, tide marsh, flood plains and public property.

(2) Residential areas zoned for single family units and Garden Apartments, which areas have been for the most part, totally developed except for some remaining areas located in R 7 Zones, which permit construction on lots containing only 7500 square feet.

(3) Industrial property held primarily by large corporations and used for them for their manufacturing purposes or ancillary functions, i.e. N.L. Industries, Dupont, Hercules and N.J. Steel.

(4) The balance of property in the Borough consists of the ravaged remnants of strip and open-pit mining, the vast

majority of which carries a PUD zoning option.

The Borough of Sayreville differs therefore from the prototypical "Developing Community" in the following important ways:

(1) It is not presently emerging from an agricultural orientation but rather has had a tradition of development for a hundred years or more.

(2) It is not presently undergoing a transition in land use patterns, but rather enjoys a long tradition of both industrial and residential growth.

(3) It is not a "Developing Community", but rather one that has already developed, albeit along very unique lines, that have to some degree, involved the scarring of the land and the construction of giant industrial complexes.

(4) What useable property that remains is not the gentle rolling pasture lands of South Jersey, but what most generously is called "marginal property", demanding comprehensive and far-sighted efforts in order to be salvaged.

ARGUMENT V

THE DENSITY PROVISIONS OF THE P.U.D. ORDINANCE PROVIDE FOR RESIDENTIAL GROWTH IN EXCESS OF COUNTY ESTIMATES

The density provisions contained within the Borough's P.U.D. Ordinance average approximately 4 residential units per acre, computed on gross acreage. This will result, if utilized to its full potential, in the construction of approximately 11,000 new residential units which if fully occupied, will increase the population of the Borough substantially in excess of what the County Planning Board's projections were. Furthermore, it would seem obvious that at least 25% of the potential units will be available to low and moderate income families. In fact, Sayreville would anticipate that, based upon present socio-economic patterns within the community, that an amount in excess of 3,000 units will be made available for those of low or moderate incomes. It would also be pointed out that the P.U.D. provides for the residential units in the community to more than double.

Presently, the Borough has 7,148 residential line items. Two of these line items consist of apartments having approximately 1,000 units, so the actual available units within the Borough presently stands at 8,000. The Planned Unit Development Ordinance calls for the potential construction of as many as 11,000 additional units or approximately 136% of what presently is available within the Borough.

It is also to be noted that fully 60% of the single

family residential units in the Borough have a value of under \$25,000., while only 14% have values in excess of \$35,000. The last significant data which should be reviewed deals with median income. These figures indicate that a full 30% of the families in Sayreville earn less than \$10,000. per year. Slightly more than 70% of all families earn a total family income of under \$15,000. per year.

The only conclusion, therefore, from a review of this data, is that the Borough not only is presently attending to its obligation to provide its fair share of housing for the low and moderate income sector of the population, but through its P.U.D. Ordinance, is taking on more than its fair share.

CONCLUSION

At this posture of the proceedings, it would appear that based upon the testimony ^{before} / the Court, that the following are the only conclusions that must inexorably be drawn in reference to the plaintiffs case against the Borough of Sayreville.

(1) The plaintiffs failed to carry their burden of proof with regard to any of the specific allegations made against the Borough and contained in their pleadings.

(2) The Borough of Sayreville is not a "Developing Community", but one that has already substantially been developed along unique lines and resulting in very unique problems.

(3) The Borough of Sayreville, in the exercise of its best judgment, has addressed itself to those unique problems by the adoption of a PUD ordinance.

(4) There was at trial no affirmative showing that any of the provisions of said PUD ordinances are exclusionary. In fact, the plaintiffs' own expert conceded that said ordinance was a "legitimate" approach to Sayreville's special problems.

(5) Sayreville is already providing its "fair share" of housing for low and moderate income families, and its PUD ordinance is the best possible vehicle by which the Borough can reasonably be expected to continue to provide housing opportunities to the entire spectrum of the market.

RECOMMENDATION

It is respectfully suggested therefore, that the plaintiffs' complaint against the Borough of Sayreville be dismissed in its entirety, with the knowledge and recognition of the fact that if the PUD ordinance, in its application over the years, proves to be deficient or the actual experience indicates that its operation is in fact exclusionary, that plaintiffs may then initiate litigation which will be based upon factual conditions rather than speculations and conjecture. However, should it succeed in providing ample housing opportunities for all while at the same time salvaging otherwise marginal property, then not only will the Borough be vindicated, but the plaintiffs well satisfied.

RESPECTFULLY SUBMITTED,

ALAN J. KARCHER,
Borough Attorney
Sayreville, N.J.